

Environmental Protection Agency

§ 35.4035

(b) 40 CFR 30.22 (b) and (c), Payment;
(c) 40 CFR 30.44 (e) (2), Procurement Procedures;
(d) 40 CFR 30.53 (b), Retention and Access Requirements for Records; and
(e) 40 CFR 31.70 (c) and 31.70 (i) as referenced by 40 CFR 30.63, Disputes.

§ 35.4015 Do certain words in this subpart have specific meaning?

Yes, some words in this subpart have specific meanings that are described in § 35.4270, Definitions. The first time these words are used they are marked with quotation marks, for example, “EPA.”

WHO IS ELIGIBLE?

§ 35.4020 Is my community group eligible for a TAG?

(a) Yes, your community group is eligible for a TAG if:

(1) You are a group of people who may be “affected” by a release or a threatened release at any facility listed on the National Priorities List (“NPL”) or proposed for listing under the National Contingency Plan (NCP) where a “response action” under CERCLA has begun;

(2) Your group meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and

(3) Your group is not ineligible according to paragraph (b) of this section.

(b) No, your community group is not eligible for a TAG if your group is:

(1) A “potentially responsible party” (PRP), receives money or services from a PRP, or represents a PRP;

(2) Not incorporated as a nonprofit organization for the specific purpose of representing affected people except as provided in § 35.4045;

(3) “Affiliated” with a national organization;

(4) An academic institution;

(5) A political subdivision (for example, township or municipality); or

(6) Established or presently sustained by ineligible entities that paragraphs

(b) (1) through (5) of this section describe, or if any of these ineligible entities are represented in your group.

§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?

You can make your group eligible by establishing an identity separate from that of the PRP or other ineligible entity by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that your group has a separate and distinct:

(a) Formal legal identity (for example, your group has different officers); and

(b) Substantive existence (meaning, is not affiliated with an ineligible entity), including its own finances.

(1) In determining whether your group has a different substantive existence from the ineligible entity, you must establish for us that your group:

(i) Is not controlled either directly or indirectly, by the ineligible entity; and

(ii) Does not control, either directly or indirectly, an ineligible entity.

(2) You must also establish for EPA that a third group does not have the power to control both your group and an ineligible entity.

§ 35.4030 Can I be part of a TAG group if I belong to an ineligible group?

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the “award official” determines you have a significant financial involvement in a PRP.

§ 35.4035 Does EPA use the same eligibility criteria for TAGs at “Federal facility” sites?

Yes, EPA uses the same criteria found in § 35.4020 in evaluating the eligibility of your group or any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.